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April 12, 2010

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 17, 2009

Case Number: TSO-0871

This Decision concerns the eligibility of XXXXXXXXXXXXX (the Individual) to obtain her access authorization.^{1/} The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual is eligible for access authorization.^{2/} After reviewing the evidence before me, I find that the Individual should not be granted access authorization.

I. Background

The Individual is employed by a Department of Energy (DOE) contractor. In connection with her employment, she applied for a security clearance in April 2009, by completing a Questionnaire for National Security Positions (QNSP). During the background

^{1/} Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine located at <http://www.oha.doe.gov/search.htm>.

^{2/} Access authorization (or security clearance) is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5(a).

investigation, the Local Security Office (LSO) determined that derogatory information existed that cast into doubt the Individual's eligibility for a security clearance. The manager of the local DOE office informed the Individual of this determination in a letter that set forth in detail the LSO's security concern and the reasons for that concern. I will hereinafter refer to this letter as the Notification Letter. The Notification Letter also informed the Individual that she was entitled to a hearing before a Hearing Officer in order to resolve the doubt concerning her eligibility for access authorization.

The Notification Letter included a statement of derogatory information that created a substantial doubt as to the Individual's eligibility to hold a clearance. This information pertains to the Individual's falsifications and omissions on the QNSP, as evidenced by contrary information provided by the Individual during a Personnel Security Interview (PSI) conducted on August 6, 2009. Information of this type is defined as derogatory in paragraph (f) of the criterion for eligibility for access to classified matter or special nuclear material.^{3/} I will hereinafter refer to paragraph (f) as Criterion F.

The Notification Letter also included as derogatory information the DOE psychiatrist's conclusion that the Individual met the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition, Text Revision (DSM IV-TR)* criteria for Alcohol-Related Disorder, Not Otherwise Specified (NOS).^{4/} In addition, the Notification included as derogatory information (1) the Individual's admission that she had consumed alcohol to intoxication twice a week from July 2006 until November 2007, while receiving counseling for alcohol abuse, (2) her admission that she was an intoxicated passenger when her friend was arrested for Driving Under the Influence (DUI), and (3) her acknowledgment that her alcohol use adversely impacted her relationship with her partner, leading to their final separation. Information of this type is defined as derogatory in paragraph (j) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8.^{5/} I will hereinafter refer to paragraph (j) as Criterion J.

^{3/} Criterion F refers to information indicating that an individual "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization." 10 C.F.R. § 710.8(f).

^{4/} In his report, the DOE psychiatrist also opined that the Individual was a user of alcohol habitually to excess. Ex. 6 at 12.

^{5/} Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

The Individual requested a hearing on this matter. The LSO forwarded this request to the Office of Hearings and Appeals (OHA), and I was appointed the Hearing Officer. The DOE entered 11 exhibits into the record and presented the testimony of the DOE psychiatrist. The Individual presented the testimony of four witnesses, in addition to testifying herself. She also entered seven exhibits into the record. The exhibits will be cited in this Decision as "Ex." followed by the appropriate numeric or alphabetic designation. The hearing transcript in the case will be cited as "Tr." followed by the relevant page number.

II. Regulatory Standard

A. The Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Dep't of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of the national security test" for the granting of security clearances indicates that "security-clearance determinations should err, if they must, on the side of denials.") *Dorfman v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that restoring her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting her eligibility for access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis of the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation or a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concerns at Issue

As previously noted, the LSO cites two criteria as bases for suspending the Individual's security clearance, Criteria F and J. To support Criterion F, the LSO relies on the Individual's falsification of information from the April 2009 QNSP, regarding her illegal drug use, alcohol counseling, and loan defaults. To support Criterion J, the LSO relies on the DOE psychiatrist's diagnosis of the Individual as meeting the criteria for Alcohol-Related Disorder, NOS, without rehabilitation or reformation. As additional support for the Criterion J concern, the LSO relies on the fact that the Individual admitted (1) she consumed alcohol to the point of intoxication twice a week between July 2006 and November 2007, while she was receiving alcohol abuse counseling, (2) she was an intoxicated passenger when her friend was arrested for DUI, and (3) her alcohol usage adversely impacted her relationship with her partner, ultimately causing their separation.

I find that the information set forth above constitutes derogatory information that raises questions about the Individual's veracity under Criterion F. The security concerns associated with Criterion F are as follows: "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulation can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process." Guideline E of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines). Also, the information set forth above constitutes derogatory information that raises concerns about the Individual's alcohol consumption. The security concerns associated with Criterion J are as follows: "excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise question about an individual's reliability and trustworthiness." Guideline G of the Adjudicative Guidelines.

IV. Findings of Fact

During her PSI, the Individual admitted that she had used illegal drugs, between 2005 and 2006, despite denying any illegal drug use on her QNSP. Ex. 1, Attachment 1 at 1. She also admitted that she had received alcohol counseling, illegal drug counseling, and mental health counseling, despite denying receiving any counseling on her QNSP. *Id.* Also during the PSI, the Individual admitted that she had defaulted on a loan in 2004, although she denied on her QNSP having any loan defaults. *Id.* In regard to her alcohol use, the Individual admitted that she consumed alcohol to intoxication at least twice a week, while receiving alcohol counseling. *Id.* at 2. Finally, in regard to her alcohol use, she admitted that she was an intoxicated passenger when her friend was arrested for DUI and that her

alcohol use adversely affected her relationship with her partner, ultimately causing their separation. *Id.*

V. Analysis

I have thoroughly considered the record of this proceeding including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c)^{6/} and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's access authorization should not be granted. I find that granting the Individual's DOE security clearance will endanger the common defense and security and is clearly inconsistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. Criterion F

It is undisputed that the Individual omitted from her QNSP that she had used illegal drugs in the past, had received alcohol, illegal drug, and mental health counseling, and had defaulted on a loan. At the hearing, she admitted that she had deliberately omitted some information from the QNSP. In regard to the illegal drug use, she stated that she was concerned she would not be granted access authorization if she listed her illegal drug use on the form. Tr. at 61. In regard to the omission of the counseling from the QNSP, she testified that she wished to maintain the privacy of the sessions. Tr. at 62. She stated that there was information she wanted to keep between herself and her counselor. Tr. at 62-63. Finally, in regard to the loan default, the Individual testified that she misunderstood the question. Tr. at 64-65. On the QNSP, she did list her debts that had been referred to collection agencies; she did not list a loan default from 2004. Tr. at 64; Ex. 9 at 54.

In evaluating a security concern arising under Criterion F, I look to the factors enumerated in 10 C.F.R. § 710.7(c), the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House, and our case law. In this case, I will consider whether the Individual came forward voluntarily to renounce her falsifications, the length

^{6/} Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation, and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant material factors.

of time the falsehood was maintained compared to the length of time the Individual has been honest, whether there is a pattern of falsifications, the amount of time that has transpired since the Individual's admission, and whether the Individual was advised regarding the security clearance process. *See Personnel Security Hearing*, Case No. TSO-0668 (2009), and case cited therein; *see also* Adjudicative Guidelines, Guideline E ¶ 17(a)-(d).

The Individual's explanations for deliberately falsifying information on the QNSP do not mitigate the security concern raised by her falsifications. First, the Individual's only explanation for not listing her illegal drugs use was her fear that she would not be granted access authorization. Second, the Individual was confronted by her drug use at the PSI; she did not come forward voluntarily to renounce her falsification. Third, she maintained her falsehood for four months from April 2009, when she signed the QNSP, until August 2009, the date of the PSI. Only five months had elapsed, as of the date of the hearing, since the Individual admitted to her falsifications. Fourth, there is a pattern of falsification in that she falsified information on three separate questions on the QNSP.

As to the second item of falsification on her QNSP, her denial of alcohol, illegal drug, or mental health counseling, she testified that she did not list it on the form because she believed her counseling was private and she did not want to discuss her childhood. The same conditions I discussed above, regarding her illegal drug usage and the QNSP falsification, apply to this omission as well. Further, we have previously stated that privacy is not permitted by the access authorization process. *Personnel Security Hearing*, Case No. TSO-0627 (2009). In order to ascertain that the applicant is eligible for access authorization, her life must be transparent to investigators. Therefore, her desire for privacy does not mitigate the security concern raised by her failure to list her counseling on the QNSP.

In regard to her loan default, she stated that she misunderstood the question. Because she did list her loans that had been referred to collection agencies, it is possible that she negligently omitted the loan default from the QNSP, when she completed the lengthy, unfamiliar form. However, given her falsifications of the other questions on the QNSP, I am not inclined to accept her explanation. For the foregoing reasons, I find that the Individual has not mitigated the concern raised by her falsifications and omissions on the QNSP.

B. Criterion J

The LSO also raised a security concerns regarding the Individual's alcohol consumption. A DOE psychiatrist diagnosed the Individual as having met the *DSM IV-TR* criterion for Alcohol-Related Disorder, NOS, without evidence of rehabilitation or reformation. Ex. 1, Attachment 1 at 2. In his report, he also stated that the Individual was a user of alcohol

habitually to excess from the summer of 2006 through November 2007.^{2/} Ex. 6 at 12. At the hearing, the DOE psychiatrist affirmed his opinion that the Individual is a user of alcohol habitually to excess. In his report and at the hearing, he stated that he relied on the Individual's elevated liver enzymes levels to reach his diagnosis of Alcohol-Related Disorder. Ex. 6 at 11-12; Tr. at 77-80.

The Individual and her two co-workers testified that in the fall of 2009 she may have been exposed to hazardous chemicals which could have elevated her liver enzyme levels, around the time of her evaluation with the DOE psychiatrist. Tr. at 12, 21, 69. However, the Individual's supervisor testified that employees are required to wear personal protective equipment that would prevent exposure to harmful chemicals. Tr. at 51-52. After hearing the testimony of the Individual's two co-workers and her supervisor, the DOE psychiatrist testified that workers in the field tend to be more knowledgeable about whether they are exposed to toxins than their supervisors. Tr. at 74. He added that he believed the Individual's supervisor was being conservative in his assessment of industrial toxin exposure. Tr. at 74. The Individual submitted two laboratory reports, one from June 2009 and the other from February 2010, showing that her liver enzymes were normal at those times. Due to these two laboratory reports which show her liver enzyme levels to be normal and the testimony from her co-workers that she could have had industrial exposure to toxins, the DOE psychiatrist testified that he found that she no longer met the criterion for Alcohol-Related Disorder, NOS, in the *DSM IV-TR*. Tr. at 85; Ex. F; Ex. G. However, the DOE psychiatrist testified that she still was a user of alcohol habitually to excess between the summer of 2006 and November 2007.

Although the DOE psychiatrist found that the Individual no longer met the criterion for Alcohol-Related Disorder, NOS, he testified that based on his finding that she is a user of alcohol habitually to excess, she still needs to be rehabilitated or reformed. Tr. at 89. In his report, he recommended six months of sobriety to show that the Individual was rehabilitated. He affirmed that recommendation at the hearing. Tr. at 87.

[T]he safest way for her would be sobriety. She's got a family history of alcoholism, some problems already, but I definitely would recommend six month sobriety. . . . and six months of treatment . . . to provide adequate evidence of rehabilitation from her past history of being a user of alcohol habitually to excess.

^{2/} In the report, the DOE psychiatrist stated that the Individual was a user of alcohol habitually to excess between the summer of 2006 and November 2006. It is apparent from reading the DOE psychiatrist's report that the second date is a typographical error. In the report, he states that it she was using alcohol habitually to excess during the time she was living in a particular state. She lived in that state until November 2007.

Tr. at 88-89. The Individual testified at the hearing that she last consumed alcohol to intoxication three days prior to the hearing. Tr. at 33. She vacillated at the hearing about her current level of alcohol consumption, initially testifying that she consumes alcohol three times a week and then correcting herself to claim that she consumes alcohol three times a month. Tr. at 35, 37. The Individual also vacillated about whether she was intoxicated three days prior to the hearing. Initially, she stated that she felt intoxicated. Tr. at 35. Later in the hearing, she stated that she did not believe that having three alcoholic beverages is intoxicating. Tr. at 59. Because of her vacillation on her alcohol consumption level and frequency, along with her falsification on the QNSP which shows she is willing to falsify information to the DOE, I am not inclined to find that her low estimates regarding her current alcohol consumption levels are correct. Even if I were to believe her testimony regarding her alcohol consumption, she has not shown that she has had six months of sobriety, as recommended by the DOE psychiatrist. Further, she did not bring forth any expert testimony to refute the DOE psychiatrist's finding or recommendation. Therefore, I must find that she has not mitigated the concern raised by the DOE psychiatrist's finding and recommendation.

As to the other three items that the LSO relied upon to raise the Criterion J security concern, she did not dispute that she consumed alcohol to the point of intoxication twice a week between July 2006 and November 2007, while receiving counseling for alcohol abuse, or that she was an intoxicated passenger when her friend was arrested for DUI. At the hearing, she testified that her marijuana use was the most important contributing factor to her separation from her partner, rather than her alcohol use. Tr. at 43. However, her statement during the PSI contradicts her testimony. Ex. 10 at 145. In the end, she did not provide convincing evidence to mitigate the security concerns associated with Criterion J.

V. Conclusion

As the foregoing indicates, the Individual has not resolved the security concerns cited in the Notification Letter under Criteria F and J. Therefore, I conclude that the Individual has not shown that granting her access authorization would not endanger the common defense and security and would be clearly inconsistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual should not be granted access authorization at this time. The parties may seek review of this decision by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: April 12, 2010